## **RULE 412: ORDER CHANGING CUSTODY OF MINOR**

- (A). An application for ex parte order to immediately change the custody of any minor child(ren) must be supported by a declaration showing by clear, specific allegations that the health and welfare of the child(ren) requires immediate change of custody. The declaration shall also set forth, in brief, the circumstances in which the child would be placed pending the hearing.
- (B). The declaration shall also contain a statement of which party currently has actual physical custody of the child(ren) in question, how such physical custody was obtained and for how long the party has had such physical custody.

(Effective July 1, 2004).

### **RULE 413: EXCLUSIVE USE OF VEHICLES**

An ex parte order granting exclusive use of a vehicle will not be granted unless the declaration demonstrates that the opposing party has suitable transportation available or requires no such transportation.

(Effective July 1, 2004).

### **RULE 414: MODIFIED ORDERS OR SET ASIDE OF EX PARTE ORDERS**

If a responding party requests an ex parte order be set aside prior to the date set for hearing, notice shall be given to the moving party as provided in Local Rule 410. The Court may order an earlier hearing date or modify the orders on a proper showing in lieu of setting aside the orders.

(Effective July 1, 2004).

### **RULE 415: INCOME AND EXPENSE DECLARATION**

(A). No case in which monetary relief of any kind is requested, including any request for child support, spousal support or attorney's fees and costs, shall be heard unless a current income and expense declaration (Judicial Council Form F-150) has been completed and filed by the moving and responding parties along with their moving and responding papers. The Income and Expense declaration filed shall be served on the opposing party with the moving or responding papers.

- (B). For purposes of this provision "current" means executed within 45 days of the date the matter is to be heard.
- (C). When the filed declaration requires no modification to correctly state the party's income and expense from the time a prior declaration was filed with the court and served on the other party, the party making this claim shall so state this in their moving or responding papers. If a party claims there has been no change since the last filing, they will attach to their moving or responding papers their last three pay stubs or other supporting financial information supporting their claim.
- (D). In the event that the moving party fails to comply with this rule, the matter may be dropped from calendar and the court may impose sanctions. The court may also impose sanctions if delay results from the failure of either party to comply with this rule.
- (E). The Income and Expense declaration shall be considered as received in evidence at the hearing subject to amendment and/or cross-examination at the time of hearing.
- (F). All blanks on the Income and Expense declaration must be answered. Notations such as "unknown", "estimate", "not applicable" or "none" should be used to avoid leaving any item blank. If current facts are temporary, both the actual current facts and the estimated prospective facts may be shown if properly identified.
- (G). Every Income and Expense declaration shall have attached to it supporting documentation to verify income claimed.
- (1) If a party claims wage income, he or she shall attach his or her last three pay stubs showing both current and year to date total income paid to the individual. If the party claims that part of his/her wages are from overtime they shall so indicate in an attachment to the declaration and further indicate the amount of regular pay received by them and the frequency and amount of overtime paid.
- (2) If a party claims income from sources other than wages they shall attach schedules establishing the other income earned in the year preceding the preparation of the declaration (i.e. business income and expense, commission income, bonus income, rental income and expense, interest income, etc.). Business expense schedules shall identify clearly any depreciation or other non-cash expenses deductible from income.

- (3) If a party is unemployed they shall attach a factual declaration stating when they were last employed, where they were last employed, gross and net income derived there from, reasons for termination and efforts to seek employment since their last job.
- (4) If a party is receiving Social Security income, Disability income, Unemployment compensation, Workman's compensation or other funds from any other entitlement program they shall so indicate in the declaration and attach to the Income and Expense form a copy of their most recent statement indicating the amount and expected duration of the entitlement income.

(Effective July 1, 2004).

# RULE 416: GUIDELINES FOR SETTING CHILD AND SPOUSAL SUPPORT IN MERCED COUNTY

The following guideline for determining child and temporary spousal support and related issues have been adopted by the Merced Superior Court. It is not the court's intent that the guidelines duplicate California statutes or rules of court, or cover every anticipated question or concern, or be a research tool. Their purpose is to acquaint interested parties with the court's approach to various problems in this area of the law.

To the extent any approach suggested in these guidelines would be contrary to law in a given case, the court obviously will follow the law. Moreover, the Court will continue to exercise its independent discretion in all cases, and will depart from any approach discussed herein that would work an unnecessary hardship on any litigant. Family Law practice has been standardized to a large degree by the requirement that Judicial Council forms be used where applicable. Failure to use such forms when appropriate may result in the refusal of the Clerk to file a submitted document.

## a. Determination of Net Disposable Income

Net disposable income shall be computed as required by FC Section 4059.

## b. Minimum Wage Presumption

The court shall presume that a party has an ability to earn at minimum, a full-time minimum wage. Any party claiming an ability less then this presumption shall have the burden of proof to establish the lesser ability.

## c. Overtime or Second Job Income

If a party has a full-time job (at least 40 hours per week) and in addition is earning supplemental income either through overtime with regular employment or through a second job, the court may exercise its discretion to discount the amount of gross income earned pursuant to the overtime or second job or order a percentage of the overtime earned to be paid as additional support. This is done to encourage the additional employment which benefits the supported child or children. Generally, if the court discounts overtime or second job earnings, it will use 50% of the average overtime or second job earnings in the prior year to determine support. The factors the Court may consider in exercising its discretion shall include:

- (i) Whether the overtime or second job worked is excessive;
- (ii) Whether the overtime worked is voluntary or an integral part of the party's regular employment;
  - (iii) The difficulty and nature of the employment;
  - (iv) The history of overtime or second job income;
- (v) A reduction in overtime or quitting the second job in order to spend more time with the children.

## d. Hardship and other Deductions

A party may claim a hardship deduction pursuant to Family Code Section 4070 and 4071 to reduce the amount of income used to calculate support. Hardship deductions include, but are not limited to the minimum basic living expenses incurred by a party for children living in the party's home for whom the party is **legally** obligated to support. In calculating such a hardship, the court shall consider any and all support money received by the party claiming the hardship for the child living in their home and the time that child actually spends in the party's home.

The party claiming a hardship or other deduction shall have the burden of proving by a preponderance of the evidence, the legitimacy of the obligation, actual payments made and any other element of entitlement to the deduction.

## e. Self-Employed Parties

The Court shall not presume that the amount or character of taxable income reported by a self-employed party for income tax purposes is an accurate reflection of gross income for purposes of computation of support, but shall consider any factors which show the actual cash flow available for personal living expenses.

## f. Employment Benefits

The Court shall consider the fair rental or reasonable value of perquisite benefits (i.e. providing the employee with housing, vehicle, utilities, gas, insurance, cellular phone, etc.) paid for by an employer on behalf of the employee/party in determining gross income for purposes of calculating child or spousal support.

## g. Income of Party Unknown

When a party's income is not known, a reasonable estimate of net income shall be used, based upon past employment, ability to earn, minimum wage or other such factors. For example, if a party, whose employment status is unknown, is healthy and able to work, an estimated gross income based upon minimum wage may be proper if that party has no earning history or no special skills, training or education.

### h. Bonus Income

When a party is entitled to bonuses or similar such income, the amount of which is contingent or undetermined, the court may award support based in part upon a percentage of such payments. Generally the Court will order that the percentage of bonus income be paid when the income is received. The percentage will generally be determined by reference to the Bonus report calculated by one of the programs approved by the California Judicial Council for use by the Court in calculating child support.

## i. Employment Related Travel Expenses

If a party is required to travel in excess of fifty (50) miles daily to go to and from work, they will be entitled to a deduction from income for purposes of calculating support to the extent that travel is not reimbursed by the employer. The deduction shall be determined by multiplying the number of miles exceeding fifty (50) that the party travels each day to go to and from work by the Internal Revenue Service allowable per

mile rate for car expense deductions (37 cents per mile as of 1/1/03). This amount shall be reduced by any dollar amount paid to the employee by their employer to defray this cost.

## j. Computation of Child Support

- (1) The Court shall follow the State wide child support formula set forth in Family Code Section 4050 et. seq.. The court uses the California Guideline Child Support Calculator.
- (2) For purposes of determining the "time share" factor to be used in the formula, the court shall base the time share percentage on the **actual** visitation being exercised. A guideline for determining the time share factor is set forth in Appendix F.
- (3) In accordance with the provisions of the Family Law Code, the court shall use the net disposable income or earning capacities of the paying and receiving parents only and ignore the income of the new mate in establishing child support. New mate income can be considered for purposes of determining the tax effect it may have on the paying or receiving parent's income. It may also be considered in exceptional circumstances as allowed by the Family Law Code. The most common exception will be that situation where a parent ceases employment, or decreases the time of employment, because of income brought in from a new relationship. For example, if a person earning \$30,000 per year marries a person making enough money to support the household without the necessity of both parties working and the party making \$30,000 per year then quits their job, the court can consider the income that the party was making prior to quitting in calculating support.
- (4) The court may order the custodial parent to release the dependency exemption for one or more of the parties' minor children to the non-custodial parent. Generally, this will be done only when the release results in an increase in the combined net disposable incomes of the parties and benefits the child or children involved. When a release is ordered, the court shall adjust the amount of child support to reflect the tax benefit to the payor and detriment to the payee, and to assure that the payee suffers no decrease in their net disposable income after the payment of the adjusted support. The order for the release of an exemption shall be conditioned upon the payor's full

compliance with child support ordered during the tax year for which the dependency exemption is released.

(5) A parent who has been ordered to pay child support shall not reduce the amount of support by reason of a claimed credit or set-off owed by the payer to the payor, or a claimed violation of a visitation or other Order, without the express written consent of the other parent or Order of the court.

### k. Health Care Insurance & Uninsured Health Care Expenses

- (1) If health insurance coverage is available through the employer of either parent at no or reasonable cost, the court may order one or both parties to carry the minor child or children on same. If health insurance coverage is unavailable at no or reasonable cost through the employer of either parent, the court may order either or both parents to obtain and pay for health insurance for their child or children.
- (2) The court will generally Order both parties to pay equally any and all uninsured medical, dental, prescription, orthodontic, vision, counseling or other health care costs incurred on behalf of the parties' child or children. The court has discretion, however, to apportion responsibility for such costs other than equally if to apportion such costs equally would be inequitable.

## 1. Travel Expense Incurred in Relation to Visitation

- (1) The responsibility for actually transporting the child or children for visitation will generally be assigned to the parent receiving custody of the child or children. This will usually result in the parties equally sharing responsibility for the cost of transportation associated with visitation or custodial time share.
- (2) If there is an out of pocket cost incurred in transporting the child or children for visits, such as air fare, the court will generally order both parties to pay one-half of the cost of same. The court may in its discretion, if it feels an equal division of the cost is inequitable, apportion responsibility for any such costs based upon the net spendable incomes of the parties after the payment of support.

## m. Spousal Support

The court will use one of the computer programs approved by the Judicial Council of the State of California for purposes of calculating temporary Spousal support.

When determining permanent support payable the court will apply the factors set forth in Family Code Section 4320.

(Effective July 1, 2004).

#### n. Standard Orders

Unless otherwise ordered by the court, all support orders will be subject to the standard orders contained on Appendix G (attached).

### **RULE 417: CONTEMPT PROCEEDINGS**

- (A). If a person cited for contempt appears without an attorney, one continuance normally will be granted to permit the citee to retain counsel.
  - (B). If the citee is found to be indigent, counsel shall be appointed.
- (C). The citee will be ordered to be present at the time and date set for the continued hearing, thus avoiding further service.

(Effective July 1, 2004).

## RULE 418: COURT SECURITY; SEARCHES OF PERSONS AND PROPERTY

In order to maintain adequate physical security for court personnel, litigants and the public, the following procedures shall apply to all court facilities:

- (A). All persons entering the Courthouse or courtroom shall be subject to cursory search, including searches of purses, parcels and other carried items at any time deemed warranted by Court Security Personnel or as directed by a judge of the court. "Cursory search" includes the use of "pat down" searches, electronic metal detection and visual inspection of the contents of any purse, parcel or carried item.
- (B). All persons entering a courtroom shall be subject to detailed search, including searches of purses, parcels, or other carried items at any time authorized by the Judge of the subject courtroom. "Detailed search" shall include all of the means in the previous paragraph, plus such additional measures as may be deemed warranted by the authorizing Judge.
- (C). Conducting searches pursuant to this Rule, Court Security Personnel shall acknowledge the right of a person to decline a search of their person or property, on condition that they immediately leave the courthouse. Such right to leave without being searched shall not apply to searches incident to arrest or otherwise being taken into

custody, or any other circumstances authorized by law which permits searches without warrant. A person who refuses to submit to search and also refuses to leave the Courthouse may be subject to arrest for violation of PC Section 148 and 166(5).

- (D). Conducting searches as authorized by this Rule, Court Security Personnel, to the extent reasonably practicable, shall conduct the searches with discretion and out of the general view of the public and other court participants, including jurors. In exercising their discretion, Court Security Personnel may take into account such factors as the intrusiveness of the search, potential disruption of court proceedings, officer safety and the security needs of the court.
- (E). Notwithstanding any of the foregoing provisions, upon good cause shown, a Judge of the court may order any method of search of persons or property deemed necessary on a case by case basis to secure the safety of the courthouse, court personnel, litigants and the public.

(Effective July 1, 2004).

#### **RULE 419: FIREARMS**

Except as otherwise ordered or authorized by the court, no person, including correctional officers, governmental employees, deputy sheriffs, members of the Highway Patrol, or other law enforcement representatives, other than a sheriff or person specifically charged with the security of the court building, or as otherwise authorized by the judge, shall keep on his or her person firearms or other weapons while in the court building and shall not bring any weapon into the courtroom when the appearance is in a civil, family law or probate matter.

(Effective July 1, 2004).

#### **RULE 420: TIME-SHARE**

As a guideline in calculating time-share, the court will follow Appendix F for some typical time-share arraignments. The court will base time-share on the actual visitation that is exercised, rather than the order, where the parties have followed a

different schedule than the court order. In accordance with statutory guidelines, the court can also consider variation from the actual percentage of time where one of the parties is bearing a disproportionate share of the expenses related to the children.

(*Effective July 1, 2004*)

# RULE 500: PROCEDURES FOR HANDLING COMPLAINTS ABOUT COURT-PROGRAM MEDIATORS

## a. Application

The rules in this chapter establish the court's procedures for receiving, investigating, and resoling complaints about mediators in the court's mediation program for general civil cases, as required by rule 3.868 of the California Rules of Court.

Nothing in these rules should be interpreted in a manner inconsistent with the rules 3.865-3.862 of the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of mediators or who may be recommended, selected, appointed, or compensated as a mediator by the court. These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of mediators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint.

### b. Definitions

As used in this chapter: